IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mewa Ram alias Mewa Singh.	Versus	State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 511/2006

and

Sudheer Arora.	Versus	State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 52o/2006

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Date of Order: September 19, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. G.J. Gupta, for the non-petitioner No.2.

BY THE COURT:

By these criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have assailed the orders dated 10-1-2006 passed by the Additional Sessions Judge No.2, Sri Ganganagar (for short, "the Revisional Court" hereinafter) in Criminal Revision Nos. 67/2005 and 28/2005 respectively, whereby the revision petitions filed by the petitioners against the order dated 13-12-2004 passed by the Chief Judicial Magistrate,

Sri Ganganagar (for short, "the trial Court" hereinafter), were dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

A complaint was lodged by non-petitioner No.2 Roshan Lal Kataria against the present petitioners and one Mahendra alleging therein that they are doing business in the name and style of "Nova Refrigeration Industry" and co-accused Mahendra and petitioner Sudheer Arora came to his shop and took orders for supply of various items. The items/goods were to be supplied by 5-5-2003 and a sum of Rs.20,000/- in cash and a cheque of Rs.90,000/- were given by the complainant to the accused. However, the supply of goods were not made on the stipulated date of 5-5-2003. On repeatedly contact on telephone, the accused supplied some of the items of poor quality valuing Rs.85,120/-. Thereafter petitioner Mewa Singh came to his shop and assured that the remaining goods will be supplied and the original parts will be replaced in place of duplicate/defective parts and the remaining payment of Rs. 24,800/- will be paid to the complainant. However, the accused did not adhere to their promise and thereby committed the offence punishable under Section 420 IPC. The learned trial Court, after recording the evidence and hearing the parties, took

cognizance of the offence under Section 420 IPC against the petitioners and co-accused Mahendra vide order dated 13-12-2004. The petitioners preferred revision petitions, which have been dismissed by the learned Revisional Court vide impugned order dated 10-1-2006.

It is contended by the learned counsel for the petitioners that right from the inception, neither there was any inducement nor a dishonest or fraudulent intention on the part of the petitioners and,,therefore, the courts below have erred in taking cognizance of the offence under Section 420 IPC against the petitioners. Learned Public Prosecutor and the counsel appearing for the complainant supported the orders passed by the Courts below.

To construe an offence of "cheating", it is essential that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shal retain any property, or intentionally induces the person so deceived, to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to have "cheat."

In the instant case, there is absolutely no evidence that the petitioners fraudulently or dishonestly ever induced the

complainant.

In S.W. Palanitkar & ors. Vs. State of Bihar & Anr., (2002) 1 SCC 241, 129, the Hon'ble Supreme Court held that for construing an offence under Section 420 IPC, it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.

In K.C. Builders & Anr. Vs. Assistant Commissioner of Income Tax, (2004) 2 SCC 731, the Apex Court held that it is settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or misrepresentation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 IPC does not arise.

In Alpic Finance Ltd. Vs. P. Sadasivan & Anr., 2001 Cr..L.R. (SC) 217, the Hon'ble Supreme held as under:-

> "The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may

> form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 IPC and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

In Ajay Mitra Vs. State of M.P. & ors, 2003 Cr.L.R. (SC) 392, the Hon'ble Supreme Court held that a guilty intention is an essential ingredient of the offence of cheating. In other words, "mens rea" on the part of the accused must be established before he can be convicted of an offence of cheating.

In Mahadeo Prasad Vs. State of West Bengal, AIR 1954 SC 724, the Hon'ble Supreme Court held as under:-

> "Where the charge against the accused is under Section 420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."

In the instant case, the petitioners and co-accused Mahendra Singh obtained orders from the complainant/non-petitioner No.2 for supply of certain items and received Rs.20,000/- in cash and Rs.90,000/- by cheque. The allegation against the petitioners is that the goods costing Rs.85,120/- supplied by them was not of the agreed quality and make as also whole of the agreed quantity of goods were not supplied within the stipulated date. From the facts on record, it cannot be said that right from the inception, the petitioners and the co-accused had any dishonest or fraudulent intention to cheat the complainant. More so, it is the case of the complainant/non-petitioner No.2 that the petitioners agreed to pay the remaining amount of Rs. 24,800/- to make good the amount received by them as an advance payment at the time of taking order for supply of various items. In this view of the matter, the

ingredients for constituting the offence under Section 420 IPC are missing in the instant case.

Consequently, both the criminal miscellaneous petitions are allowed. The impugned orders dated 13-12-2004 and 10-1-2006 passed by the trial Court and the Revisional Court respectively, are set aside and the petitioners are discharged from the offence under Section 420 IPC.

(H.R. PANWAR), J.

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